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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/876,103	06/08/2001	Tomoharu Hase	684.2801 CI	9599

5514 7590 09/21/2005

FITZPATRICK CELLA HARPER & SCINTO  
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NEW YORK, NY 10112

EXAMINER
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EVANS, GEOFFREY S

ART UNIT	PAPER NUMBER
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1725

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/876,103

Applicant(s)

HASE ET AL.

Examiner

Geoffrey S. Evans

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— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20-22, 26-32, 37, 40, 41 and 46-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-22, 26-32, 37, 41, 48, 49 and 51-53 is/are allowed.
- 6) ☒ Claim(s) 40, 46, 47, 50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

### DETAILED ACTION

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claim 46 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,252,648 in view of claim 16 of U.S. Patent No. 6,252,648. Claim 1 of U.S. Patent No. 6,252,648 discloses all of the limitations of claim 46 except cleaning while oxygen gas is introduced into the closed space. Claim 16 of U.S. Patent No. 6,252,648 teaches cleaning while oxygen gas is in the closed space. It would have been obvious to adapt claim 1 of U.S. Patent No. 6,252,648 in view of claim 16 of U.S. Patent No. 6,252,648 to provide this to clean the optical element.

3. Claim 47 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,252,648 in view of claim 16 of U.S. Patent No. 6,252,648 as applied to claim 46 above and further in view of claim 12 of U.S. Patent No. 6,252,648. Claim 12 of U.S. Patent No. 6,252,648 teaches performing an exposure process by use of the apparatus of claim 1

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of U.S. Patent No. 6,252,648. It would have been obvious to adapt claim 1 of U.S. Patent No. 6,252,648 in view of claim 16 of U.S. Patent No. 6,252,648 and claim 12 of U.S. Patent No. 6,252,648 to provide this to perform photolithography.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 40 and 50 are rejected under 35 U.S.C. 102(b) as being anticipated by Shibata et al. in U.S. Patent No. 5,454,347. Shibata et al. has a casing (element 2), an optical element (element 4), a first supplier (element 8) which supplies an inert gas (argon or nitrogen; see column 2, line 56) and a second supplier (element 9) for supplying oxygen gas. Shibata et al. further discloses a controller (element 12) that removes the oxygen by using an inert gas (see column 3, lines 20-25) and that the laser beam can be used at 100% intensity (see column 3, lines 60-67) which indicates that all of the oxygen gas has been removed.

6. Applicant's arguments with respect to claims of record have been considered but are moot in view of the new ground(s) of rejection. The delay in making this rejection is regretted.

7. Claims 20-22, 26, 27-32, 37, 41, 48, 49, 51-53 are allowed.

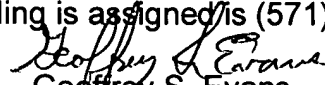
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Geoffrey S Evans whose telephone number is (571)-

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272-1174. The examiner can normally be reached on Mon-Fri 6:30AM to 4:00 PM,  
alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's  
supervisor, Tom Dunn can be reached on (571)-272-1171. The fax phone number for  
the organization where this application or proceeding is assigned is (571)-273-8300.

GSE

  
Geoffrey S. Evans  
Primary Examiner  
Group 1700